

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

JESSE VIZCAINO,

Plaintiff,

No. CIV S-05-132 MCE KJM PS

vs.

SUPREME COURT OF GUAM,

Defendant.

ORDER

Plaintiff is proceeding pro se and in forma pauperis. The federal in forma pauperis statute authorizes federal courts to dismiss a case if the action is legally “frivolous or malicious,” fails to state a claim upon which relief may be granted, or seeks monetary relief from a defendant who is immune from such relief. 28 U.S.C. § 1915(e)(2).

A claim is legally frivolous when it lacks an arguable basis either in law or in fact. Neitzke v. Williams, 490 U.S. 319, 325 (1989); Franklin v. Murphy, 745 F.2d 1221, 1227-28 (9th Cir. 1984). The court may, therefore, dismiss a claim as frivolous where it is based on an indisputably meritless legal theory or where the factual contentions are clearly baseless. Neitzke, 490 U.S. at 327.

A complaint, or portion thereof, should only be dismissed for failure to state a claim upon which relief may be granted if it appears beyond doubt that plaintiff can prove no set

1 of facts in support of the claim or claims that would entitle him to relief. Hishon v. King &
2 Spalding, 467 U.S. 69, 73 (1984) (citing Conley v. Gibson, 355 U.S. 41, 45-46 (1957)); Palmer
3 v. Roosevelt Lake Log Owners Ass'n, 651 F.2d 1289, 1294 (9th Cir. 1981). In reviewing a
4 complaint under this standard, the court must accept as true the allegations of the complaint in
5 question, Hospital Bldg. Co. v. Rex Hosp. Trustees, 425 U.S. 738, 740 (1976), construe the
6 pleading in the light most favorable to the plaintiff, and resolve all doubts in the plaintiff's favor,
7 Jenkins v. McKeithen, 395 U.S. 411, 421 (1969).

8 The court finds the allegations in plaintiff's complaint so vague and conclusory
9 that it is unable to determine whether the current action is frivolous or fails to state a claim for
10 relief. The court has determined that the complaint does not contain a short and plain statement
11 as required by Fed. R. Civ. P. 8(a)(2). Although the Federal Rules adopt a flexible pleading
12 policy, a complaint must give fair notice and state the elements of the claim plainly and
13 succinctly. Jones v. Community Redev. Agency, 733 F.2d 646, 649 (9th Cir. 1984). Plaintiff
14 must allege with at least some degree of particularity overt acts which defendants engaged in that
15 support plaintiff's claim. Id. Because plaintiff has failed to comply with the requirements of Fed.
16 R. Civ. P. 8(a)(2), the complaint must be dismissed. The court will, however, grant leave to file
17 an amended complaint.

18 As a model for drafting such a document, plaintiff is directed to McHenry v.
19 Renne, 84 F.3d 1172, 1177 (9th Cir. 1996). There, the Ninth Circuit Court of Appeal upheld the
20 dismissal of a complaint it found to be "argumentative, prolix, replete with redundancy, and
21 largely irrelevant. It consists largely of immaterial background information." It observed that the
22 Federal Rules require that a complaint consist of "simple, concise, and direct" averments. Id. As
23 a model of concise pleading, the court quoted the standard form negligence complaint from the
24 Appendix to the Federal Rules of Civil Procedure:

25 /////

26 /////

1. Allegation of jurisdiction.

2. On June 1, 1936, in a public highway, called Boylston Street, in Boston Massachusetts, defendant negligently drove a motor vehicle against plaintiff, who was then crossing said highway.

3. As a result plaintiff was thrown down and had his leg broken, and was otherwise injured, was prevented from transacting his business, suffered great pain of body and mind, and incurred expenses for medical attention and hospitalization in the sum of one thousand dollars.

Wherefore plaintiff demands judgment against defendant in the sum of one thousand dollars.

Id.

Phrased another way, "Vigorous writing is concise." William Strunk, Jr. & E.B. White, *The Elements of Style*, § III, ¶ 13 <<http://www.bartleby.com/141>>. Accordingly, any amended complaint should **not exceed twenty pages**.

If plaintiff chooses to amend the complaint, plaintiff must set forth the jurisdictional grounds upon which the court's jurisdiction depends. Federal Rule of Civil Procedure 8(a). Further, plaintiff must demonstrate how the conduct complained of has resulted in a deprivation of plaintiff's federal rights. See Ellis v. Cassidy, 625 F.2d 227 (9th Cir. 1980).

In addition, plaintiff is informed that the court cannot refer to a prior pleading in order to make plaintiff's amended complaint complete. Local Rule 15-220 requires that an amended complaint be complete in itself without reference to any prior pleading. This is because, as a general rule, an amended complaint supersedes the original complaint. See Loux v. Rhay, 375 F.2d 55, 57 (9th Cir. 1967). Once plaintiff files an amended complaint, the original pleading no longer serves any function in the case. Therefore, in an amended complaint, as in an original complaint, each claim and the involvement of each defendant must be sufficiently alleged.

////

////

1 In accordance with the above, IT IS HEREBY ORDERED that:

2 1. Plaintiff's complaint is dismissed; and

3 2. Plaintiff is granted thirty days from the date of service of this order to file an
4 amended complaint that complies with the requirements of the Federal Rules of Civil Procedure,
5 and the Local Rules of Practice; the amended complaint must bear the docket number assigned
6 this case and must be labeled "Amended Complaint"; plaintiff must file an original and two
7 copies of the amended complaint; failure to file an amended complaint in accordance with this
8 order will result in a recommendation that this action be dismissed.

9 DATED: May 2, 2005.

10 
11 UNITED STATES MAGISTRATE JUDGE
12
13
14

15 006
16 vizcaino132.lta